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**CASE NO. 14-13158**

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**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

**RICHARD LOBERGER, ET AL.,  
PLAINTIFFS-APPELLANTS,**

v.

**DEL-JEN, INC., ET AL.  
DEFENDANTS-APPELLEES.**

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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA  
PANAMA CITY DIVISION**

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**DEFENDANT-APPELLEE J&J MAINTENANCE, INC.'S  
RESPONSE TO PLAINTIFFS-APPELLANTS' TIME SENSITIVE MOTION  
FOR RECONSIDERATION OF CLERK'S ORDER**

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Respectfully Submitted By:

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**RICHARD LOBERGER, ET AL. v. DEL-JEN, INC., ET AL.,**  
**Case Number: 14-13158**

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE  
DISCLOSURE STATEMENT**

Pursuant to Rule 26 of the Federal Rules of Appellate Procedure and Eleventh Circuit Rule 26.1-1, the undersigned counsel of record for Defendant-Appellee J&J Maintenance, Inc. hereby file the Certificate of Interested Persons and Corporate Disclosure Statement and state that the following additional companies have an interest in this suit:

1. The Hartford Financial Services Group, Inc. (HIG) (Parent corporation of Twin City Fire Insurance Co.)
2. Twin City Fire Insurance Co. (Insurance carrier of Defendant J&J Maintenance, Inc.)

There are no publically traded corporations that are a party in this litigation; however, Defendant-Appellee Del-Jen, Inc. has stated that it is a subsidiary of Fluor Enterprises, Inc., which owns 10% or more of Del-Jen and is a publicly traded corporation.

No publicly traded corporation owns 10% or more of Defendant-Appellee J&J's stock.

**DEFENDANT-APPELLEE J&J MAINTENANCE, INC.'S  
RESPONSE TO PLAINTIFFS-APPELLANTS' TIME SENSITIVE  
MOTION FOR RECONSIDERATION OF CLERK'S ORDER**

Defendant-Appellee J&J Maintenance, Inc. ("J&J") responds to Plaintiffs-Appellants' Motion for Reconsideration of Clerk's Order as follows:

Eleventh Circuit Rule 42-2(c) empowers the clerk to enter an order dismissing an appeal if the appellant fails to file a brief or appendix by the applicable due date. Appellants acknowledge that their brief was due on October 6 and that the brief was not filed until October 7. [Appellants' October 17, 2014 Time Sensitive Motion for Reconsideration of the Clerk's Order, pp. 2, 6.]

Once the order of dismissal is entered, the "exclusive method" for requesting reinstatement is the timely filing of a motion to set aside the dismissal, showing "*extraordinary circumstances*" for the reinstatement. 11<sup>th</sup> Cir. R. 42-2(e) (emphasis added). Appellants failed to address the "extraordinary circumstances" standard in their motion. They did, however, make certain representations which may bear on whether the circumstances are extraordinary:

- Appellants previously obtained a 30-day extension to file their initial brief, making it due on October 6, 2014. [Appellants' October 17, 2014 Time Sensitive Motion for Reconsideration of the Clerk's Order, p. 1.]

- Appellants attempted to upload their brief “just before midnight” on October 6, 2014. [Appellants’ October 7, 2014 Second Motion for Enlargement of Time in Which to Serve and File Initial Brief, p. 1.]
- Appellants’ Motion to Set Aside provides evidence that the brief was emailed between Appellants’ counsel on multiple occasions – all after the midnight deadline had passed. The motion does not show steps having been taken before midnight on October 6, 2014. [Appellants’ October 17, 2014 Time Sensitive Motion for Reconsideration of the Clerk’s Order, pp. 2-4.]
- “The undersigned is a rare filer on this Court’s website ...” [Appellants’ October 17, 2014 Time Sensitive Motion for Reconsideration of the Clerk’s Order, p. 6.] According to the Court’s website, Appellants’ counsel has been counsel of record in five appeals in 2014 alone – Appeal Docket Nos. 14-10447; 14-12140; 14-12650; 14-13158 (this appeal); and 14-14022.<sup>1</sup>
- “The undersigned takes seriously strict compliance with court rules.” [Appellants’ October 17, 2014 Time Sensitive Motion for Reconsideration of the Clerk’s Order, p. 6.] In Appeal No. 14-12650, Appellants’ counsel sought an extension to file his initial brief at 11:59 p.m. on the original due date (July 28, 2014). Although the initial brief was timely filed, the clerk

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<sup>1</sup> To the extent Appellants’ counsel means that he rarely *personally* files pleadings in this Court, it was not prudent to wait until “just before midnight” to begin uploading the brief.

dismissed that appeal on October 17, 2014, for failure to file an appendix. In Appeal No. 14-14022, Appellants' counsel sought an extension to file his initial brief at 11:59 p.m. on the original due date (October 20, 2014). J&J respectfully requests that Appellants' motion be denied because it does not appear that the circumstances presented in the motion are extraordinary.

Respectfully submitted, this 22nd day of October 2014.

s/Sean M. Libby  
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**CERTIFICATE OF SERVICE**

I hereby further certify pursuant to Fed. R. App. P. 25(d)(1)(B) and 11th Cir. R. 25-3 that the foregoing **DEFENDANT-APPELLEE J&J MAINTENANCE, INC.'S RESPONSE TO PLAINTIFFS-APPELLANTS' TIME SENSITIVE MOTION FOR RECONSIDERATION OF CLERK'S ORDER** has been filed with the Clerk of Court using the CM/ECF System which will automatically send email notification of such filing to the following attorneys of record at the following e-mail addresses:

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Respectfully submitted, this 22nd day of October 2014.

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